

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:09CV55-MU-02

MICHAEL McNEILL,)
Plaintiff,)
)
v.)
)
LANESBORO CORRECTIONAL)
STAFF,)
Defendants.)
_____)

THIS MATTER comes before the Court on initial review of Plaintiff's civil rights Complaint under 42 U.S.C. §1983 (document # 1), filed November 12, 2008, in the United States District Court for the Eastern District of North Carolina and transferred to this Court by Order filed February 12, 2009 (document #5). For the reasons stated herein, Plaintiff's Complaint must be summarily dismissed.

Plaintiff is an inmate who currently is being housed at the Lanesboro Correctional Institution in Polkton, North Carolina. Plaintiff is no stranger to the federal courts within the State of North Carolina as he has filed numerous civil rights law suits with those tribunals. More particularly, a review of pertinent Court documents reflects that on April 9, 2008, Plaintiff's civil rights Complaint was transferred to this Court pursuant to 28 U.S.C. § 1391(b) by Order of the United States District Court for the Eastern District of North Carolina. (See McNeill v. Stamper, et al., 5:08ct3039-D, document # 5). Such action was filed

pursuant to 28 U.S.C. § 1915(a)¹ and named as defendants several officers at the Lanesboro Correctional Institution, the Atlantic Diagnostics of Durham and the North Carolina Department of Corrections. Ultimately, this Court dismissed the action in its entirety for Plaintiff's failure to state a claim for relief against any of the defendants. (See McNeill v. Stamper et al., 3:08CV-162-1-MU, document ## 12 and 25).

The record also reflects that on March 26, 2008, Plaintiff returned to the United States District Court for the Eastern District of North Carolina and filed another civil rights action against an Officer Jordan and several other officers at the Harnett Correctional Institution under 28 U.S.C. § 1915(a). (See McNeill v. Jordan, et al., 5:08ct3040-FL). Again, however, that action was dismissed in its entirety as frivolous. (Id., document # 4). Moreover, Plaintiff secured pauper status and appealed that decision, and his appeal was dismissed as frivolous by the Fourth Circuit Court of Appeals. See McNeill v. Jordan, et al., No. 08-7080 (4th Cir. Sept. 17, 2008).

Undaunted, on November 12, 2008, Plaintiff again returned to the United States District Court for the Eastern District of North Carolina and filed the instant civil rights action against

¹Section 1915(a)(1) provides that subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits any affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.

Boyd Bennett, Director of the North Carolina Division of Prisons, seeking monetary damages for "false advertisement," and against the "Lanesboro Correctional Administrative Staff" for allegations of deliberate indifference (See McNeill v. Bennett, 5:08CT-3148-FL). Upon its initial review of the matter, the Eastern District Court dismissed Plaintiff's action against Defendant Bennett as frivolous, and transferred the remaining allegations to this Court for disposition. (Id., document # 5). However, this Court has determined that Plaintiff is not entitled to proceed as a pauper with this action because he previously has had at least three of his actions dismissed for frivolity and/or his failure to state a claim for relief therein.

Indeed, 28 U.S.C. § 1915(g) provides that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." Here, the surviving portion of Plaintiff's Complaint attempts to raise claims of deliberate indifference against the Administrative Staff of the Lanesboro Correctional Institution. Nevertheless, Plaintiff has failed to

assert or even to suggest that he is in imminent danger of physical injury. Therefore, because Plaintiff previously has had at least three of his civil cases dismissed as contemplated under § 1915(g), he has brought the instant action as a pauper under § 1915(a), and he has failed to establish that he should be excepted from the rule), this Court must summarily dismiss the balance of his Complaint.

NOW, THEREFORE, IT IS HEREBY ORDERED that the instant Complaint is **DISMISSED** without prejudice. See 28 U.S.C. §1915(g).

SO ORDERED.

Signed: February 17, 2009

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

